

House File 2201 - Introduced

HOUSE FILE 2201

BY ISENHART and KELLEY

A BILL FOR

1 An Act relating to gifts, honoraria, and loans received from
2 restricted donors and others.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
ETHICS LAWS

Section 1. Section 68B.2, subsection 9, Code 2011, is amended to read as follows:

9. *Gift* means a rendering of anything of value, tangible or intangible, in return for which legal consideration of equal or greater value is not given and received.

Sec. 2. Section 68B.22, subsection 4, paragraph n, Code 2011, is amended to read as follows:

n. Gifts with a value of one hundred dollars or less which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

Sec. 3. Section 68B.22, subsection 4, paragraph s, Code 2011, is amended to read as follows:

s. Gifts of food, beverage, and entertainment received at a function where every member of the general assembly has been invited to attend, when the function takes place ~~during a regular session of the general assembly~~ on a day when both houses of the general assembly convene during a regular session and members receive a per diem pursuant to section 2.10. A sponsor of a function under this paragraph shall file a registration prior to the function taking place identifying the sponsor and the date, time, and location of the function. The registration shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house and with the board. After a function takes place, the sponsor of the function shall file a report disclosing the total amount expended, including in-kind expenditures, on food, beverage, and entertainment for the function. The report shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house and with the board within twenty-eight calendar days following the date of the function. For purposes of this paragraph, entertainment includes free or reduced-price tickets to a scheduled event

1 open to the general public if the general public may obtain the
2 tickets on the same free or reduced-price basis.

3 Sec. 4. Section 68B.22, Code 2011, is amended by adding the
4 following new subsections:

5 NEW SUBSECTION. 9. An official, state employee, candidate
6 for state public office, or a member of the immediate family
7 of an official, state employee, or candidate for state public
8 office who receives a gift from a restricted donor that meets
9 one of the exceptions provided in subsection 4 and that has a
10 value of more than one hundred dollars shall submit a report
11 disclosing the gift to the board in a manner required by the
12 board. The report shall identify the gift, the restricted
13 donor, the value of the gift, the date the gift was received,
14 and any other information required by the board. The receipt
15 of a gift meeting the criteria of subsection 4, paragraph
16 "a", shall not be reported in the report required under this
17 subsection.

18 NEW SUBSECTION. 10. A member of the general assembly, a
19 legislative employee, or a member of the immediate family of a
20 member of the general assembly or a legislative employee who
21 receives a gift from a restricted donor that meets one of the
22 exceptions provided in subsection 4 and that has a value of
23 more than one hundred dollars shall submit a report disclosing
24 the gift to the general assembly in a manner required by the
25 senate or house of representatives or legislative council, as
26 applicable. The report shall identify the gift, the restricted
27 donor, the value of the gift, the date the gift was received,
28 and any other information required by the senate or house of
29 representatives. The receipt of a gift meeting the criteria of
30 subsection 4, paragraph "a", shall not be reported in the report
31 required under this subsection.

32 Sec. 5. NEW SECTION. **68B.22A Reporting of gifts and**
33 **bequests received.**

34 1. An agency of state government that receives a gift
35 or bequest with a value of more than one hundred dollars

1 shall report the gift or bequest to the board and the general
2 assembly's standing committees on government oversight. A
3 foundation attached to or associated with an agency of state
4 government that receives a gift or bequest that has a value of
5 more than one hundred dollars and is intended to provide moneys
6 for the funding of a gift to an official or state employee
7 shall report the gift or bequest to the board and the general
8 assembly's standing committees on government oversight.

9 2. By January 31 of each year, the board shall submit
10 to the fiscal services division of the legislative services
11 agency a written report listing all gifts and bequests
12 received during the previous calendar year with a value over
13 one thousand dollars and the purpose for each such gift or
14 bequest. The submission shall also include a listing of all
15 gifts and bequests received by a department from a person if
16 the cumulative value of all gifts and bequests received by the
17 department from the person during the previous calendar year
18 exceeds one thousand dollars, and the board shall include, if
19 available, the purpose for each such gift or bequest.

20 3. The reports on gifts or bequests filed by the state board
21 of regents and the Iowa state fair board pursuant to section
22 8.44 shall be deemed sufficient to comply with the requirements
23 of this section.

24 Sec. 6. Section 68B.23, Code 2011, is amended by adding the
25 following new subsections:

26 NEW SUBSECTION. 3. An official or state employee receiving
27 honoraria as allowed under this section of an amount or with
28 a value of more than one hundred dollars shall file a report
29 disclosing the receipt of honoraria with the board in the
30 manner provided in section 68B.22, subsection 9.

31 NEW SUBSECTION. 4. A member of the general assembly or a
32 legislative employee receiving honoraria as allowed under this
33 section of an amount or with a value of more than one hundred
34 dollars shall file a report disclosing the receipt of honoraria
35 with the senate or house of representatives or legislative

1 council, as applicable, in the manner provided in section
2 68B.22, subsection 10.

3 Sec. 7. Section 68B.24, Code 2011, is amended to read as
4 follows:

5 **68B.24 Loans — receipt from ~~lobbyists~~ restricted donors**
6 **prohibited.**

7 1. An official, member of the general assembly, state
8 employee, legislative employee, or candidate for state office
9 shall not, directly or indirectly, seek or accept a loan or
10 series of loans from a person who is a ~~lobbyist~~ restricted
11 donor.

12 2. A ~~lobbyist~~ restricted donor shall not, directly or
13 indirectly, offer or make a loan or series of loans to an
14 official, member of the general assembly, state employee,
15 legislative employee, or candidate for state office. A
16 ~~lobbyist~~ restricted donor shall also not, directly or
17 indirectly, join with one or more persons to offer or make a
18 loan or series of loans to an official, member of the general
19 assembly, state employee, legislative employee, or candidate
20 for state office.

21 3. This section shall not apply to loans made in the
22 ordinary course of business. For purposes of this section,
23 a loan is "*made in the ordinary course of business*" when it
24 is made by a person who is regularly engaged in a business
25 that makes loans to members of the general public and the
26 finance charges and other terms of the loan are the same or
27 substantially similar to the finance charges and loan terms
28 that are available to members of the general public.

29 Sec. 8. REPEAL. Section 8.7, Code Supplement 2011, is
30 repealed.

31 DIVISION II

32 CONFORMING AMENDMENTS

33 Sec. 9. Section 22.7, subsection 52, paragraph d, Code
34 Supplement 2011, is amended to read as follows:

35 *d.* This subsection does not apply to a report filed with the

1 ethics and campaign disclosure board pursuant to section ~~8-7~~
2 68B.22A.

3 Sec. 10. Section 68B.22, subsection 3, Code 2011, is amended
4 to read as follows:

5 3. A restricted donor may give, and a public official,
6 public employee, or candidate, or the person's immediate family
7 member, may accept an otherwise prohibited nonmonetary gift or
8 a series of otherwise prohibited nonmonetary gifts and not be
9 in violation of this section if the nonmonetary gift or series
10 of nonmonetary gifts is donated within thirty days to a public
11 body, the department of administrative services, or a bona fide
12 educational or charitable organization, if no part of the net
13 earnings of the educational or charitable organization inures
14 to the benefit of any private stockholder or other individual.
15 All such items donated to the department of administrative
16 services shall be disposed of by assignment to state agencies
17 for official use or by public sale. A person ~~subject to~~
18 ~~section 8-7~~ that receives a gift pursuant subject to this
19 subsection and section 68B.22A shall file a report pursuant to
20 section ~~8-7~~ 68B.22A.

21 Sec. 11. Section 68B.32, subsection 1, Code 2011, is amended
22 to read as follows:

23 1. An Iowa ethics and campaign disclosure board is
24 established as an independent agency. The board shall
25 administer this chapter and set standards for, investigate
26 complaints relating to, and monitor the ethics of officials,
27 employees, lobbyists, and candidates for office in the
28 executive branch of state government. The board shall
29 administer and set standards for, investigate complaints
30 relating to, and monitor the campaign finance practices of
31 candidates for public office. The board shall administer and
32 establish standards for, investigate complaints relating to,
33 and monitor the reporting of gifts and bequests under section
34 ~~8-7~~ 68B.22A. The board shall consist of six members and shall
35 be balanced as to political affiliation as provided in section

1 69.16. The members shall be appointed by the governor, subject
2 to confirmation by the senate.

3 Sec. 12. Section 68B.32A, subsections 1, 2, 5, 6, 7, 9, 12,
4 and 19, Code 2011, are amended to read as follows:

5 1. Adopt rules pursuant to chapter 17A and conduct hearings
6 under sections 68B.32B and 68B.32C and chapter 17A, as
7 necessary to carry out the purposes of this chapter, chapter
8 68A, and section ~~8.7~~ 68B.22A.

9 2. Develop, prescribe, furnish, and distribute any forms
10 necessary for the implementation of the procedures contained
11 in this chapter, chapter 68A, and section ~~8.7~~ 68B.22A for the
12 filing of reports and statements by persons required to file
13 the reports and statements under this chapter and chapter 68A.

14 5. Receive all registrations and reports that are required
15 to be filed with the board under this chapter or section ~~8.7~~
16 68B.22A. The board, upon its own motion, may initiate action,
17 conduct hearings, impose sanctions, and order administrative
18 resolutions relating to reporting requirements under this
19 chapter or section ~~8.7~~ 68B.22A.

20 6. Prepare and publish a manual setting forth examples
21 of approved uniform systems of accounts and approved methods
22 of disclosure for use by persons required to file statements
23 and reports under this chapter, chapter 68A, and section ~~8.7~~
24 68B.22A. The board shall also prepare and publish other
25 educational materials, and any other reports or materials
26 deemed appropriate by the board. The board shall annually
27 provide all officials and state employees with notification
28 of the contents of this chapter, chapter 68A, and section ~~8.7~~
29 68B.22A by distributing copies of educational materials to each
30 agency of state government under the board's jurisdiction.

31 7. Assure that the statements and reports which have been
32 filed in accordance with this chapter, chapter 68A, and section
33 ~~8.7~~ 68B.22A are available for public inspection and copying
34 during the regular office hours of the office in which they are
35 filed and not later than by the end of the day during which a

1 report or statement was received. Rules adopted relating to
2 public inspection and copying of statements and reports may
3 include a charge for any copying and mailing of the reports
4 and statements, shall provide for the mailing of copies upon
5 the request of any person and upon prior receipt of payment
6 of the costs by the board, and shall prohibit the use of
7 the information copied from reports and statements for any
8 commercial purpose by any person.

9 9. Establish and impose penalties, and recommendations
10 for punishment of persons who are subject to penalties of or
11 punishment by the board or by other bodies, for the failure to
12 comply with the requirements of this chapter, chapter 68A, or
13 section ~~8-7~~ 68B.22A.

14 12. Establish a procedure for requesting and issuing board
15 advisory opinions to persons subject to the authority of the
16 board under this chapter, chapter 68A, or section ~~8-7~~ 68B.22A.
17 Local officials and local employees may also seek an advisory
18 opinion concerning the application of the applicable provisions
19 of this chapter. Advice contained in board advisory opinions
20 shall, if followed, constitute a defense to a complaint
21 alleging a violation of this chapter, chapter 68A, section ~~8-7~~
22 68B.22A, or rules of the board that is based on the same facts
23 and circumstances.

24 19. Impose penalties upon, or refer matters relating to,
25 persons who provide false information to the board during a
26 board investigation of a potential violation of this chapter,
27 chapter 68A, section ~~8-7~~ 68B.22A, or rules of the board. The
28 board shall adopt rules to administer this subsection.

29 Sec. 13. Section 68B.32B, subsection 1, Code 2011, is
30 amended to read as follows:

31 1. Any person may file a complaint alleging that a
32 candidate, committee, person holding a state office in the
33 executive branch of state government, employee of the executive
34 branch of state government, or other person has committed a
35 violation of chapter 68A or rules adopted by the board. Any

1 person may file a complaint alleging that a person holding a
2 state office in the executive branch of state government, an
3 employee of the executive branch of state government, or a
4 lobbyist or a client of a lobbyist of the executive branch of
5 state government has committed a violation of this chapter or
6 rules adopted by the board. Any person may file a complaint
7 alleging a violation of section ~~8-7~~ 68B.22A or rules adopted
8 by the board. The board shall prescribe and provide forms
9 for purposes of this subsection. A complaint must include
10 the name and address of the complainant, a statement of the
11 facts believed to be true that form the basis of the complaint,
12 including the sources of information and approximate dates of
13 the acts alleged, and a certification by the complainant under
14 penalty of perjury that the facts stated to be true are true to
15 the best of the complainant's knowledge.

16 Sec. 14. Section 68B.32B, subsection 4, paragraph a, Code
17 2011, is amended to read as follows:

18 a. Facts that would establish a violation of a provision
19 of this chapter, chapter 68A, section ~~8-7~~ 68B.22A, or rules
20 adopted by the board.

21 Sec. 15. Section 68B.32B, subsections 8 and 9, Code 2011,
22 are amended to read as follows:

23 8. The purpose of an investigation by the board's staff
24 is to determine whether there is probable cause to believe
25 that there has been a violation of this chapter, chapter 68A,
26 section ~~8-7~~ 68B.22A, or of rules adopted by the board. To
27 facilitate the conduct of investigations, the board may issue
28 and seek enforcement of subpoenas requiring the attendance and
29 testimony of witnesses and subpoenas requiring the production
30 of books, papers, records, and other real evidence relating to
31 the matter under investigation. Upon the request of the board,
32 an appropriate county attorney or the attorney general shall
33 assist the staff of the board in its investigation.

34 9. If the board determines on the basis of an investigation
35 by board staff that there is probable cause to believe the

1 existence of facts that would establish a violation of this
2 chapter, chapter 68A, section ~~8-7~~ 68B.22A, or of rules adopted
3 by the board, the board may issue a statement of charges and
4 notice of a contested case proceeding to the complainant and
5 to the person who is the subject of the complaint, in the
6 manner provided for the issuance of statements of charges
7 under chapter 17A. If the board determines on the basis of
8 an investigation by staff that there is no probable cause to
9 believe that a violation has occurred, the board shall close
10 the investigation, dismiss any related complaint, and the
11 subject of the complaint shall be notified of the dismissal.
12 If the investigation originated from a complaint filed by a
13 person other than the board, the person making the complaint
14 shall also be notified of the dismissal.

15 Sec. 16. Section 68B.32C, subsections 1 and 3, Code 2011,
16 are amended to read as follows:

17 1. Contested case proceedings initiated as a result of
18 the issuance of a statement of charges pursuant to section
19 68B.32B, subsection 9, shall be conducted in accordance
20 with the requirements of chapter 17A. Clear and convincing
21 evidence shall be required to support a finding that a person
22 has violated this chapter, section ~~8-7~~ 68B.22A, or any rules
23 adopted by the board pursuant to this chapter. A preponderance
24 of the evidence shall be required to support a finding that a
25 person has violated chapter 68A or any rules adopted by the
26 board pursuant to chapter 68A. The case in support of the
27 statement of charges shall be presented at the hearing by one
28 of the board's attorneys or staff unless, upon the request
29 of the board, the charges are prosecuted by another legal
30 counsel designated by the attorney general. A person making a
31 complaint under section 68B.32B, subsection 1, is not a party
32 to contested case proceedings conducted relating to allegations
33 contained in the complaint.

34 3. Upon a finding by the board that the party charged has
35 violated this chapter, chapter 68A, section ~~8-7~~ 68B.22A, or

1 rules adopted by the board, the board may impose any penalty
2 provided for by section 68B.32D. Upon a final decision of the
3 board finding that the party charged has not violated this
4 chapter, chapter 68A, section ~~8.7~~ 68B.22A, or the rules of the
5 board, the complaint shall be dismissed and the party charged
6 and the original complainant, if any, shall be notified.

7 Sec. 17. Section 68B.32D, subsection 1, unnumbered
8 paragraph 1, Code 2011, is amended to read as follows:

9 The board, after a hearing and upon a finding that a
10 violation of this chapter, chapter 68A, section ~~8.7~~ 68B.22A,
11 or rules adopted by the board has occurred, may do one or more
12 of the following:

13 Sec. 18. Section 68B.32D, subsection 1, paragraphs c, d, and
14 h, Code 2011, are amended to read as follows:

15 c. Issue an order requiring the violator to file any report,
16 statement, or other information as required by this chapter,
17 chapter 68A, section ~~8.7~~ 68B.22A, or rules adopted by the
18 board.

19 d. Publicly reprimand the violator for violations of this
20 chapter, chapter 68A, section ~~8.7~~ 68B.22A, or rules adopted by
21 the board in writing and provide a copy of the reprimand to the
22 violator's appointing authority.

23 h. Issue an order requiring the violator to pay a civil
24 penalty of not more than two thousand dollars for each
25 violation of this chapter, chapter 68A, section ~~8.7~~ 68B.22A,
26 or rules adopted by the board.

27 EXPLANATION

28 This bill relates to gifts, honoraria, and loans received
29 from restricted donors. The bill is organized by divisions.

30 ETHICS LAWS. Currently, the gift law prohibits public
31 officials, public employees, and candidates, and immediate
32 family members of public officials, public employees, and
33 candidates from accepting or receiving gifts from restricted
34 donors. The gift law includes a list of exceptions that makes
35 an otherwise impermissible gift permissible.

1 Currently, the term "gift" in Code chapter 68B provides
2 that a gift is the rendering of anything of value in return
3 for which legal consideration of equal or greater value is
4 not given and received. The division adds that a gift can be
5 either tangible or intangible.

6 Currently, one of the exceptions to the gift law is a gift
7 from a restricted donor to a public official or public employee
8 for a wedding or twenty-fifth or fiftieth wedding anniversary.
9 The division limits such permissible gifts to a value of \$100
10 or less.

11 Currently, one of the exceptions to the gift law is for
12 food, beverage, and entertainment received at a function where
13 every member of the general assembly has been invited to attend
14 during a regular session of the general assembly. The division
15 changes the required time frame from during a regular session
16 of the general assembly to a day when both houses of the
17 general assembly convene during a regular session and members
18 receive a per diem. As a result, functions would only qualify
19 for the exception if they take place during the first 110 days
20 in the first regular session of a general assembly or during
21 the first 100 days in the second regular session of a general
22 assembly. The division also provides that entertainment may
23 include free or reduced-price tickets to a scheduled event open
24 to the general public if the general public may obtain the
25 tickets on the same free or reduced-price basis.

26 The division adds a reporting requirement to the gift law.
27 If a gift meets one of the exceptions to the gift law and the
28 value of the gift is more than \$100, certain recipients must
29 file a report with the Iowa ethics and campaign disclosure
30 board or with the general assembly, as applicable, disclosing
31 the gift. The reporting requirement does not apply to
32 contributions to a candidate or a candidate's committee.

33 The division requires a public official or public employee
34 receiving permissible honoraria of an amount or with a value
35 of more than \$100 to file a report with the Iowa ethics

1 and campaign disclosure board or the general assembly, as
2 applicable, disclosing the honoraria.

3 Currently, an official, member of the general assembly,
4 state employee, legislative employee, or candidate for state
5 office is prohibited from seeking or accepting a loan from
6 a lobbyist. The division applies the prohibition to all
7 restricted donors.

8 Currently, Code section 8.7 requires all gifts and bequests
9 received by a department or by the governor on behalf of the
10 state to be reported to the ethics and campaign disclosure
11 board and the general assembly's standing committees on
12 government oversight. The division repeals Code section 8.7
13 and moves the content of the Code section to new Code section
14 68B.22A and makes changes. The division provides that all
15 agencies of state government, including the governor, must
16 report the receipt of gifts and bequests. The division limits
17 the reporting to gifts and bequests with a value of more than
18 \$100. The division provides that a foundation attached to or
19 associated with an agency of state government must report gifts
20 and bequests with a value of more than \$100 when the gift or
21 bequest is intended to provide moneys for the funding of a gift
22 to an official or state employee.

23 CONFORMING AMENDMENTS. The division makes conforming
24 amendments related to the moving of the contents of Code
25 section 8.7 to new Code section 68B.22A.